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EXAMINER

SARCIONE, JESSICA LYNN

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UNITED STATES PATENT AND TRADEMARK OFFICE

BEFORE THE BOARD OF PATENT APPEALS
AND INTERFERENCES

Ex parte FRED WILLIAM CHAPMAN, RICHARD C. NOVA,
DAVID ROBERT HAMPTON, JAMES M. OWEN,
ROBERT NISKANEN, JOHN CARLTON DAYNES,
RONALD EUGENE STICKNEY, RENE ANN YOUNG MITCHELL
and GREGORY T. KAVOUNAS

Appeal 2009-005483
Application 10/810,045
Technology Center 3700

Decided: January 19, 2010

Before LINDA E. HORNER, KEN B. BARRETT, and
FRED A. SILVERBERG, *Administrative Patent Judges*.

SILVERBERG, *Administrative Patent Judge*.

DECISION ON APPEAL

STATEMENT OF THE CASE

Fred William Chapman et al. (Appellants) seek our review under 35 U.S.C. § 134 of the final rejection of claims 19-29 and 34-42. We have jurisdiction under 35 U.S.C. § 6(b) (2002).

SUMMARY OF DECISION

We REVERSE.

THE INVENTION

Appellants' claimed invention is directed to external defibrillators that are customized for at least one person, *i.e.*, an anticipated patient (Spec. 2: ¶ [0009]).

Claims 19 and 37, reproduced below, are representative of the subject matter on appeal.

19. An external defibrillator comprising:
a therapy delivery module; and
a processor to determine whether a patient is one of an anticipated patient or a non-anticipated patient, wherein the anticipated patient is an individual patient associated with a patient-specific, customized profile, and to control delivery of therapy to the patient by the therapy delivery module according to one of a general profile if the patient is the non-anticipated patient or the customized profile if the patient is the anticipated patient.

37. A computer-readable medium comprising instructions that cause a programmable processor to: determine whether a patient is one of an anticipated patient or a non-anticipated patient, wherein the anticipated patient is an individual

patient associated with a patient-specific, customized profile; and control delivery of therapy to the patient via an external defibrillator according to one of a general profile if the patient is the non-anticipated patient or the customized profile if the patient is the anticipated patient.

THE REJECTIONS

The Examiner relies upon the following as evidence of unpatentability:

Brodard	US 5,285,781	Feb. 15, 1994
Cole	US 5,836,993	Nov. 17, 1998
Rockwell	US 6,141,584	Oct. 31, 2000
Snyder	US 6,370,428 B1	Apr. 9, 2002

The following rejections by the Examiner are before us for review:

1. Claims 19, 21, 24, 25, 28, 29, 34, 35, 37, 39, 41 and 42 are rejected under 35 U.S.C. § 102(b) as being anticipated by Cole.
2. Claims 22, 26, 27 and 36 are rejected under 35 U.S.C. § 103(a) as being unpatentable over Cole.
3. Claims 20 and 38 are rejected under 35 U.S.C. § 103(a) as being unpatentable over Cole in view of Snyder.
4. Claims 23 and 40 are rejected under 35 U.S.C. § 103(a) as being unpatentable over Cole in view of Brodard.
5. Claim 36 is rejected under 35 U.S.C. § 103(a) as being unpatentable over Cole in view of Rockwell.

ISSUE

The issue before us is whether the Examiner erred in finding that Cole describes a processor that can determine whether a patient is one of an anticipated-patient (an individual) or a non-anticipated patient, wherein if the patient is an anticipated-patient, the processor controls delivery of therapy according to a patient-specific, customized profile, as called for in claims 19 and 37 (App. Br. 6).

ANALYSIS

Regarding claims 19, 21, 24, 25, 28, 29, 34, 35, 37, 39, 41 and 42:

Appellant contends that Cole does not describe a processor to determine whether a patient is one of an anticipated-patient or a non-anticipated patient, wherein an anticipated patient is an individual patient as called for in claims 19 and 37 (App. Br. 6). Appellant further contends that as Cole describes treatment of two different classes of patients, pediatric and adult, Cole does not describe treatment of an individual patient (App. Br. 6-7).

The Examiner found that Cole describes a processor 12, a first memory 16, a removable second memory 22 including instructions for a child, and an actuator 24. The Examiner further found that since the removable memory 22 must be attached when a child is treated; the child is an “anticipated patient.” Still further, the Examiner found that “[w]hen a user actuates the actuator 24, upon attachment of the removable second memory 22, the processor 12 determines that the patient is an ‘anticipated’ patient and retrieves instructions for pediatric therapy delivery from the second memory 22.” (Ans. 4) (emphasis added).

Claims 19 and 37 refer to, *inter alia*, (1) a processor that can distinguish between an anticipated patient and a non-anticipated patient, wherein the anticipated patient is an individual patient; and (2) the processor controlling the delivery of therapy according to a customized profile when the patient is an anticipated patient.

Cole describes that “a defibrillator operating with instructions encoded on a first memory to treat adult patients may be transformed into a pediatric defibrillator by attaching a second memory containing instructions used by the controller to treat small children.” (col. 6, ll. 2-6).

In Cole, the attaching of the second memory 22 makes the defibrillator a pediatric defibrillator that can treat small children in general; it does not make the defibrillator specific to an individual child. Further, since Cole does not describe a defibrillator specific to an individual child, Cole’s processor is not described as being able to distinguish between children in general (non-anticipated patient) and an individual child (an anticipated patient) so as to provide therapy based on a customized profile specific to an individual child.

Therefore, Cole does not describe a processor (or the instructions therefor) as called for in claims 19 and 37.

Accordingly, Cole does not anticipate claims 19 and 37. For the same reasons, Cole does not anticipate claims 21, 24, 25, 28, 29, 34, 35, 39, 41 and 42, which depend from claims 19 and 37, respectively.

Regarding claims 22, 26, 27 and 36: The Examiner’s conclusion of obviousness regarding claims 22, 26, 27 and 36 (Ans. 7, 14) was premised on the same erroneous underlying finding of fact, that is, on the previous

conclusion that Cole described the processor called for in claim 19 and, therefore, anticipated claim 19.

We previously concluded that Cole did not describe the processor called for in claim 19 and, therefore, did not anticipate claim 19.

The Examiner has not provided any rationale why the processor called for in claim 19 would have been obvious to a person having ordinary skill in the art. *See KSR Int'l Co. v. Teleflex Inc.*, 550 U.S. 398, 418 (2007).

Further, it is not clear to us why the processor called for in claim 19 would have been obvious to a person having ordinary skill in the art.

Thus, for the same reasons set forth above regarding claim 19, we cannot sustain the rejection of claims 22, 26, 27 and 36 under 35 U.S.C. § 103.

Regarding claims 20, 23, 36, 38 and 40: The Examiner's rejections of claims 20, 23, 36, 38 and 40 under 35 U.S.C. § 103 are based on the same erroneous underlying finding of fact, that is, that Cole describes the processor called for in claims 19 and 37. Thus, for the same reasons set forth above regarding claims 19 and 37; we cannot sustain the rejections of claims 20, 23, 36, 38 and 40 under § 103.

CONCLUSION

Appellants have established that the Examiner erred in finding that Cole describes a processor that can determine whether a patient is one of an anticipated-patient (an individual) or a non-anticipated patient, wherein if the patient is an anticipated-patient, the processor controls delivery of

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therapy according to a patient-specific, customized profile, as called for in claims 19 and 37.

DECISION

The decision of the Examiner to reject claims 19-29 and 34-42 is reversed.

REVERSED

mls

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